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 Chapter 7 Trustee

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 8 **UNITED STATES BANKRUPTCY COURT**  
 9 **EASTERN DISTRICT OF CALIFORNIA**  
 10 **SACRAMENTO DIVISION**

11 In re:

12 ROBERT WINFORD SMITH and

13 TAMMY FORMENT

14 Debtors.

Case No. 13-33274-B-7  
 Chapter 7

DNL-2

Date: March 11, 2014  
 Time: 9:32 a.m.  
 Place: Dept. B, Courtroom 32  
 501 I Street, 6<sup>th</sup> Floor  
 Sacramento, CA 95814

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 17 **MOTION FOR AUTHORITY TO SELL ESTATE PROPERTY**

18 J. MICHAEL HOPPER ("Trustee"), in his capacity as the Chapter 7 trustee for the  
 19 bankruptcy estate of ROBERT WINFORD SMITH and TAMMY FORMENT (collectively  
 20 "Debtors"), hereby moves for authority to sell the bankruptcy estate's interest in the following  
 21 vehicles: (a) 1968 Ford Mustang automobile described by the Debtors as having a blown motor  
 22 ("Mustang"); (b) 1983 Toyota Corolla automobile described by the Debtors as being in poor  
 23 condition ("Corolla"); (c) 2003 Cadillac Escalade pick up truck described by the Debtors as being  
 24 in fair condition ("Escalade"); and (d) 2008 Mercedes Benz C300 automobile described by the  
 25 Debtors as being in good condition ("Benz") (collectively "Vehicles"), to the Debtors, for the  
 26 purchase price of \$18,741.84, subject to overbidding at the sale hearing. In support of his motion,  
 27 Trustee submits the following:  
 28

**JURISDICTION AND BACKGROUND FACTS**

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2 1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157(b)(2)(N)  
3 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The relief  
4 sought in this motion is appropriate and proper pursuant to 11 U.S.C. § 363.

5 2. On October 14, 2013, the Debtors commenced the above-captioned bankruptcy case  
6 by the filing of a voluntary Chapter 7 petition. Trustee is the duly appointed Chapter 7 trustee for  
7 the Debtors' bankruptcy estate.

8 3. Among the scheduled assets of the Debtors' bankruptcy estate is the Debtors' interest  
9 in the Vehicles. The Debtors' amended schedules reflect that the non-exempt equity in the Vehicles  
10 aggregate \$21,859.81, which is calculated as follows: (a) \$10,786.97 net non-exempt equity in the  
11 Mustang (the scheduled value is \$15,000, subject to a \$1,313.03 lien claim and \$2,900.00  
12 exemption); (b) \$500 non-exempt equity in the Corolla; (c) \$8,485 non-exempt equity in the  
13 Escalade; and (d) \$2,087.84 net non-exempt equity in the Benz (the scheduled value is \$17,392,  
14 subject to a \$15,304.16 lien claim).

15 4. The Debtors' amended schedules also reflect that the Debtors' cash and deposit funds  
16 aggregate \$4,699.93 and are subject to a claim of exemption in the amount of \$3,441.77, pursuant  
17 to California Code of Civil Procedure Section 704.070.

**SALE AGREEMENT**

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19 5. Subject to Bankruptcy Court approval and overbidding through conclusion of the  
20 sale hearing, Trustee has entered into a sale agreement with the Debtors providing for the Debtors'  
21 purchase of the bankruptcy estate's interest in the Vehicles ("Sale Agreement"). The essential terms  
22 of the Sale Agreement include the following: (1) the Debtors shall purchase the bankruptcy estate's  
23 interest in the Vehicles for the purchase price of \$18,741.84; (2) \$8,741.84 of the purchase price  
24 shall be paid within 7 days of Bankruptcy Court approval of the Sale Agreement and the balance  
25 shall be paid in \$1,000 installments, which shall be made payable on the first day of each month after  
26 Bankruptcy Court approval of the Sale Agreement; (3) the Debtors' payment obligation shall be  
27 secured by the Vehicles; (4) upon receipt of the full purchase price of the Vehicles, Trustee shall  
28 convey title to the Vehicles to the Debtors by bill of sale; and (5) the Debtors shall turn over to

1 Trustee the \$1,258.16 non-exempt portion of the cash and deposit funds, described above, within  
2 7 days of execution of the Sale Agreement.

3 **BASIS FOR RELIEF SOUGHT**

4 Pursuant to 11 U.S.C. Section 363(b)(1), a trustee can sell property of the estate after  
5 notice and hearing. A sale under Section 363(b)(1) must have a valid business justification and  
6 be proposed in good faith. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (9th Cir.  
7 BAP 1996). Trustee's proposed sale to the Debtors has a valid business justification and is in the  
8 best interest of the bankruptcy estate. The sale provides for the recovery of nearly all of the non-  
9 exempt equity in the Vehicles and will provide for a sure return to the estate in the amount of  
10 \$18,741.84. Moreover, in Trustee's opinion, the sale to the Debtors is more beneficial than  
11 auctioning the Vehicles because an auction could provide for a return to the estate that is less  
12 than the current sale price. Indeed, the estate would have to account for the risk associated with  
13 an auction, an auctioneer's commission (12%), the cost to store the Vehicles, and the  
14 administrative costs associated with employing and compensating an auctioneer. Finally, Trustee  
15 will provide notice to all interested parties so prospective buyers will have an opportunity to  
16 submit overbids. Based on the foregoing, the proposed sale to the Debtors is a good faith effort  
17 by Trustee to maximize the net return to the estate on account of the Vehicles.

18 **WHEREFORE**, Trustee respectfully prays that the motion be granted and for such other  
19 and further relief as is necessary and proper.

20  
21 Dated: February 11, 2014

**DESMOND, NOLAN, LIVAICH & CUNNINGHAM**

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23 By:  \_\_\_\_\_

**J. RUSSELL CUNNINGHAM**

Attorneys for J. Michael Hopper, Trustee